

Banking and Finance Law Daily Wrap Up, TOP STORY—CFPB begins investigation of investigative demands, (Jan. 24, 2018)

Banking and Finance Law Daily Wrap Up

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By [Richard A. Roth, J.D.](#).

As promised last week, the Consumer Financial Protection Bureau will be asking for comments on its use of civil investigative demands. As the first step in CFPB Acting Director Mick Mulvaney's plan to gather evidence on how well the Bureau is doing its job, the [request for information](#) poses 11 specific questions that the notice says will help the CFPB assess its existing processes for originating, drafting, and enforcing CIDs.

The Dodd-Frank Act gives the Bureau the authority to issue CIDs to anyone—companies or individuals—who is believed to have information on a violation of any law under the Bureau's authority (12 U.S.C. §5562). The CFPB's use of that authority has been the subject of court challenges as companies have contested the breadth of the information demanded, the identification of the law that might have been violated, and the relevance of the information to that law.

The RFI says that CIDs are "an essential tool for fulfilling the Bureau's statutory mission of enforcing Federal consumer financial law." However, it also expresses concern that CIDs are imposing excessive burdens on the companies that must respond to them.

Specific questions. The CFPB's notice makes clear that it is just a starting point in the inquiry, saying that the list of specific questions is "a preliminary attempt" to identify the parts of the CID process on which attention should immediately be focused. The questions will look at:

1. how the Bureau initiates investigations;
2. how it issues CIDs;
3. how it could help CID recipients better understand the investigation;
4. the nature and scope of the information requests;
5. the time limits and deadlines for each step in the process;
6. whether the procedures for taking testimony are appropriate;
7. whether inadvertently disclosed privileged information is handled properly;
8. whether witnesses are accorded their rights;
9. the "meet and confer" process that the Bureau and CID recipients can use to discuss and potentially modify CIDs;
10. the certification and document submission standards for CID responses; and
11. the CFPB's processes for handling petitions to modify or set aside CIDs.

The notice emphasizes the Bureau's desire to collect comments from companies that have received CIDs in the past, as well as from those companies' attorneys. The focus appears to be on easing the burden for recipients, rather than on improving the Bureau's access to information.

Comment deadline. The Bureau expects that its RFI will be published in the *Federal Register* on Friday, January 26, and comments will be accepted for the following 60 days.

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